

**STATE OF NEW HAMPSHIRE**  
**DEPARTMENT OF LABOR**  
**CONCORD, NEW HAMPSHIRE**

**V**

**LUI LUI**

**DECISION OF THE HEARING OFFICER**

**Nature of Dispute:** RSA 275:43 I unpaid wages  
RSA 275:43 V unpaid vacation time and personal day

**Employer:** Lui Lui, 259 Daniel Webster Highway, Nashua, NH 03060

**Date of Hearing:** May 7, 2015

**Case No.** 49930

**BACKGROUND AND STATEMENT OF THE ISSUES**

A Wage Claim was filed with the Department of Labor on February 26, 2015. The notice was sent to the employer and there was an objection. The objection was sent to the claimant and there was a request for a hearing. The Notice of Hearing was sent to both parties on April 6, 2015.

The claimant testified that he worked for the employer for about three months. He worked from November 14, 2014 until February 15, 2015. The claimant further testified that there was a hiring agreement in place and that there is a management policy handbook. The claimant stated that he signed the handbook after he was employed.

The claimant said that he was fired "for cause" but this was not upheld in his request for unemployment compensation. The claimant believes that because he was not terminated "for cause" he is due two weeks of vacation time and three of the allotted five days of personal leave. He testified that he was paid for all salary due and that the leave is the only outstanding issue.

The employer testified that the claimant was discharged for cause. There were multiple reasons for the discharge and the employer felt that it was their right under New Hampshire law to discharge without notice. The employer did say that the policy of leave was one of accrual and not a lump sum distribution. The employer also pointed out that the policy clearly stated that leave, in the first year and the last year, was prorated.

### **FINDINGS OF FACT**

RSA 275:43 I Every employer shall pay all wages due to employees within 8 days including Sunday after expiration of the week in which the work is performed, except when permitted to pay wages less frequently as authorized by the commissioner pursuant to paragraph II, on regular paydays designated in advance by the employer and at no cost to the employee:

- (a) In lawful money of the United States;
- (b) By electronic fund transfer;
- (c) By direct deposit with written authorization of the employee to banks of the employee's choice;
- (d) By a payroll card provided that the employer shall provide to the employee at least one free means to withdraw up to and including the full amount of the employee balance in the employee's payroll card or payroll card account during each pay period at a financial institution or other location convenient to the place of employment. None of the employer's costs associated with a payroll card or payroll card account shall be passed on to the employee; or
- (e) With checks on a financial institution convenient to the place of employment where suitable arrangements are made for the cashing of such checks by employees for the full amount of the wages due; provided, however, that if an employer elects to pay employees as specified in subparagraphs (b), (c), or (d), the employer shall offer employees the option of being paid as specified in subparagraph (e), and further provided that all wages in the nature of health and welfare fund or pension fund contributions required pursuant to a health and welfare fund trust agreement, pension fund trust agreement, collective bargaining agreement, or other agreement adopted for the benefit of employees and agreed to by the employer shall be paid by every such employer within 30 days of the date of demand for such payment, the payment to be made to the administrator or other designated official of the applicable health and welfare or pension trust fund.

This is the section of the law that mandates an employer to pay an employee all wages due at the time the wages are due and owing.

RSA 275:43 V Vacation pay, severance pay, personal days, holiday pay, sick pay, and payment of employee expenses, when such benefits are a matter of employment practice or policy, or both, shall be considered wages pursuant to RSA 275:42, III, when due.

This part of the law places issues such as vacation time and personal time into the category of wages when the time is due and owing.

It is the finding of the Hearing Officer, based on the written submissions and the testimony of the parties, that the Wage Claim is invalid. The claimant has the burden to show that there are wages due and owing and he did not meet this burden.

The claimant worked under a management policy agreement that he signed after being hired. The policy is very clear, the first year and the last year of employment are prorated for the purpose of taking leave.

The employer was credible in his testimony that the claimant was paid the full pay period for the last week. He was terminated, "for cause", in the middle of the pay period. The

employer maintained that the payment of the full pay period used any prorated leave recorded for the last year.

The claimant used the argument that New Hampshire Employment Security did find that he was not discharged "for cause". This decision was issued for the purposes of receiving unemployment benefits. The decision did not overturn the discharge. The employer exercised their rights under the "at will" status for employment. An employee may quit at any time and the employer may discharge an employee at any time.

The Wage Claim is invalid.

### **DECISION AND ORDER**

Based on the testimony and evidence presented, as RSA 275:43 I requires that an employer pay all wages due an employee, and as RSA 275:43 V considers vacation pay to be wages, when due, if a matter of employment practice or policy, or both, and as this Department finds that the claimant failed to prove by a preponderance of the evidence that he is due any vacation pay, it is hereby ruled that the Wage Claim is invalid.

---

Thomas F. Hardiman  
Hearing Officer

Date of Decision: May 21, 2015

TFH/kdc